IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER 1999

PRESENT

THE HON'BLE MR. JUSTICE M.F. SALDANHA

AND

THE HON'BLE MR. JUSTICE N.S. VEERABHADRAIAH

Crl. Appeal No. 598/98

Between:-

1. Chikkahottappa @ Varadegowda,
S/o Varade Gowda,
Aged 55 years,
Resident of Bandihalli,
Kunigal Taluk.

2. Honnaiah,
S/o Varadegowda,
Aged 54 years,
Resident of Bandihalli,
Kunigal Taluk.

3. Thammaiah @ Chota,
S/o Varadegowda,
Aged 50 years,
Resident of Bandihalli,
Kunigal Taluk.

4. Lokesh, S/o Varadegowda,
Aged 39 years,
R/o Bandihalli,
Kunigal Taluk.

5. Raja, S/o T.V. Varadegowda,
Aged 25 years,
R/o Bandihalli,
Kunigal Taluk.

6. Thammaiah,
S/o Puttegowda,
Aged 53 years,
R/o Bandihalli,
Kunigal Taluk.

7. Puttarama,
S/o Puttegowda,
Aged 41 years,
R/o Bandihalli,
Kunigal Taluk.

8. Prabhakar,
S/o Thammaiah,
Aged 24 years,
Resident of Bandihalli,
Kunigal Taluk. .. Appellants

(By Sri S.G. Bhagawan, Sri S.K. Venkata Reddy and Sri R. Sridhar Hiremath, Advs. for Appellants 1 and 4 to 8,
Sri H.C. Hanumaiah,
Sri K.S. Aswathnarayana Reddy and
Sri B.K. Narendra Babu, Advs. for
Appellants 2 and 3)

And:-

State of Karnataka,
By Huliyurdurga Police Station,
Tumkur District. ..Respondent

(By Sri B.V. Pinto, Addl. SPP. for Respt.)

* * * * *

This Cr.Appeal is filed u/s 374(2) Cr.P.C. by the advocate for the appellants/accused against the judgement dt.12/15.6.98 passed by the Prl. Sessions Judge, Tumkur in S.C.No.7/93 convicting the appellants 1 to 8 / accused 1 to 8 for the offences u/ss.148 of IPC and Sec.302 r/w Sec.149 of IPC and sentencing each of them to pay a fine of Rs.500/- and i.d., of payment of fine to undergo S.I. for three months for an offence u/s 148 of IPC and further sentencing them to undergo R.I. for life and to pay a fine amount of Rs.5,000/- (five thousand only) each and i.d., of payment of fine to undergo further R.I. for a period of one year for an offence u/s 302 r/w Sec.149 of IPC.

This Appeal coming on for hearing this day, Mr. M.F. SALDANHA, J. delivered the following:-

J U D G M E N T

J U D G M E N T

The eight appellants before us were the original accused in Sessions Case No.7/1993 before the learned Principal Sessions Judge, Tumkur. It was alleged that in an incident that took place at Bandihalli at about 7 p.m. on 13-7-1992, that the eight accused who are members of an unlawful assembly had assaulted the deceased Rajanna with machus, sticks and a wooden reeper and that as a result of the injuries sustained by him, he died shortly thereafter. The accused are all inter-related and the prosecution alleges that there was some rivalry between the two groups which is of a long standing nature and that this was the real reason for the incident. The mother of the deceased P.W.1-Ningamma states that the accused persons had come to her house shortly before the incident and that some of them were armed with machus and that the remaining persons had clubs and wooden reeper with them. They asked her as to where her son Rajanna was. She informed the persons who had come there that Rajanna had gone

out and she bolted the door because she states that they were in an aggressive mood. According to her, they threw stones on the house and that they once again enquired about Rajanna and since she told them that he was not in the house, that they left the place stating that they would finish him. According to her shortly after this, she went in the direction in which these persons has proceeded and she saw Rajanna approaching from the opposite side. On seeing the accused persons, he tried to escape from them but the accused caught hold of him and severely assaulted him. She states that Rajanna had fallen on the ground with several injuries starting from his head to different parts of the body and the lower limbs and that he was bleeding. The accused are supposed to have left the place with the weapons stating that Rajanna was finished after which, some attempt was made to take the injured person to the hospital at Huliyurdurga in a car. Rajanna died on the way and ultimately, the body was taken to the Police Station and from there to the hospital. The complainant who is Ningamma lodged the complaint at 9.30 p.m. and this complaint which has been treated as the F.I.R.

was ultimately sent to the J.M.F.C., Kunigal, which reached him at 7.30 a.m. the next morning. We need to also mention that there is one other aspect of the case which is of some consequence namely the fact that it has emerged from the medical evidence that accused No.4-Lokesh had also sustained two injuries of considerable seriousness on his left thigh and right leg respectively and that he came to be admitted to the hospital at Huliyurdurga on the same evening at about 7.30 p.m. A-4 has lodged a complaint with the Police to the effect that deceased Rajanna and two other persons had assaulted him near his house at about 5.30 p.m. on 13-7-1992 and that he had sustained the injuries in the course of that incident. Ultimately, the Police have filed a 'B' report in respect of this complaint. We refer to this while narrating the facts because we shall have occasion to deal with this aspect of the case which is of some importance. As far as the complaint lodged by Ningamma is concerned, the Police registered an offence being Crime No.92/1992 under Section 302 IPC read with Section 149 IPC and after completion of the investigation, put up eight accused for trial. The

learned trial Judge has found the eight accused persons guilty of the offences punishable under Sections 302 read with 149 IPC and has convicted all of them and sentenced them to suffer R.I. for life under the main charge along with a fine of Rs.5,000-00 in default, to undergo further R.I. for a period of one year. The accused have also been convicted of the offence under Section 148 IPC and have been fined Rs.500-00 in default, to undergo S.I. for three months. The present appeal assails the correctness of these convictions and sentences.

2. At the hearing of the appeal, we have heard the appellants' learned Counsel and we have also heard the learned Additional Public Prosecutor for the State. The record of this case is relatively heavy and we have done a total review and reappreciation of the evidence that forms part of the record. We have also perused the judgment of the lower Court carefully and have heard the respective learned Counsel both on facts as also in law. The first contention that was raised before us on behalf of the accused is with regard to the

lodging of the complaint Exhibit P.1. As far as this is concerned, the evidence indicates that Ningamma has lodged the complaint at the Police Station at 9.30 p.m. This was an oral complaint which was reduced to writing and the record indicates that this process took approximately one hour. Some argument was advanced with regard to whether the complaint has been lodged without any delay and what was contended basically was that if the sequence of events is verified, the incident is alleged to have taken place at 7 p.m. and, it was an incident of relatively short duration. Rajanna was seriously injured and an immediate attempt was made to rush him to the hospital at Huliyurdurga which is about 8 K.Ms away and since he died on the way, the P.W.1 and the others went to the Police Station. What was pointed out to us was that all this process could not have taken more than a short time and that there is really no explanation as to why the complaint was lodged only at 9.30 p.m. and the usual submission that was put forward was that having regard to the bitter hostility between the two groups, that careful planning and decision making had taken place in order to implicate as

many persons as possible and that this is the reason for the delay. We do not see much substance in this particular grievance because there has not been any detailed cross-examination particularly as far as P.W.1 is concerned on this particular point and therefore, one may reasonably assume that there was no unreasonable delay as far as the lodging of the complaint is concerned.

3. The real argument that was forcefully put forward as far as the aspect of delay goes emanated from the second aspect namely that if the process relating to the taking down of the complaint was completed by 10.30 p.m. as to what is the explanation of the prosecution for the fact that the F.I.R. which had been sent through a Police Constable to the J.M.F.C. at Kunigal reached the Court only at 7.30 a.m. Learned Counsel pointed out to us that the distance is 28 K.Ms, that there is plenty of transport available not only to the Police but also as far as the other persons are concerned, that the Police are conscious of the fact that in a serious case such as the present one that any undue delay would be damaging to the

prosecution and that despite this, the prosecution has not examined the Police Constable who carried the F.I.R. nor has it put forward any explanation for this long delay of nine hours. The learned Addl.SPP drew our attention to the evidence of P.W.18 who is the Police Officer concerned and to the fact that he has stated that the F.I.R. was transmitted to the Court and he submits that not a single question was put to the Police Officer in cross-examination questioning him as to what the reasons for the time lag were. His submission is that if the defence has not availed of the opportunity which arose when the Officer was examined and if the defence has not specifically brought it out in evidence that there has been either abnormal or unexplained delay, that it is not fair to advance an argument in a situation where no grievance has been made. We see some justification in this submission because even though the basic duty is that of the prosecution to explain even the aspect of the time factor, if it has not been disputed at all during the trial, it would be a little difficult for us to sustain a complaint at this stage. The added reason for it

is because we are satisfied from the record that the complaint was lodged in the Police Station between 9.30 and 10.30 p.m. on the previous night. Cases in which Courts have upheld the second aspect namely the delay in transmission to the Court are invariably ones in which there is a serious doubt with regard to the point of time when the original complaint was lodged and it reasonably appears that the fact that the complaint reached the Court at a later point of time creates the possible impression in the Court's mind that the original complaint itself was lodged much later than what the authorities make it out to be. This is not such a case and in the absence of anything having come on record that will raise suspicion with regard to any undue delay, we see no ground on which this grievance can assist the defence.

4. Next, what was pointed out to us is that the main witnesses in this case namely P.Ws. 1, 3, 6 and 9 are effectively partisan in so far as they are either closely related to or belong to the side of the deceased and that having regard to the background of hostility, that the Court must insist

upon independent corroboration before acting on this evidence. The heads on which the learned Counsel has assailed the quality of the evidence and the nature of the evidence will be dealt with by us subsequently when we refer to the evidence of these witnesses but the general contention was that in a background of bitter hostility the rule of caution would require that a Court must look to the independent corroboration because all those who share the hostility irrespective of the number of witnesses are bound to tow the common line. We do not dispute the fact that where there is a background of hostility, a Court has got to be guided by a much higher degree of caution and that a Court must also look to the corroborative evidence but what we need to record is that the law on the point is now well crystalised. Merely because witnesses may be family members or belong to the same party as the injured or the deceased does not ipso facto mean that their evidence is necessarily tainted. Courts do come across situations often in which there is exaggeration and false implication and this is precisely why a Court will act with caution while dealing with this

evidence but at the same time if the evidence after scrutiny is found to be reliable and if the Court is convinced that the evidence is trustworthy and that there is no fabrication of false implication, then there is no ground on which the evidence can be rejected. Also, one comes back to the age old problem namely that in situations where there is group rivalry or hostility between different factions resulting in violent incidents irrespective of whether it is in the urban or rural areas, the difficulty of getting any independent third parties to depose about the incident arises and the Courts are therefore left with evidence of the family members and persons belonging to the faction or the group and it is therefore not unusual as has happened in the present case, that the prosecution has to stand or fall on the basis of the quality of this evidence alone.

5. The next head of controversy with regard to which we propose to deal at this stage itself emanates from the submission put forward on behalf of the accused that the witnesses have indicated the time of the incident as 7 p.m. It was pointed

out to us that there is no reference any where to any light sources and that therefore, the Court would have to proceed on the assumption that who ever saw the incident or claims to have seen it has done so on the basis of the available degree of light. It was contended that this was well past the day light hours, that there is no specific indication of the level of light and that therefore, the Court would have to take judicial notice of the fact that being late in the evening, it was approaching darkness. This is one of the general contentions put forward on behalf of the defence that the visibility would have been poor and that therefore, the quality of the evidence requires to be carefully scrutinised by the Court. It was contended that the possibility of errors and more importantly the possibility of mistaken identification would be extremely high and that therefore, the Court should generally take this factor into account while considering the evidence of the persons who claim to be eye witnesses. We are conscious of this fact but what we also take note of one other circumstance namely that if it is the specific case of the defence that the light

conditions were so very low that it would have been difficult or impossible to identify, then this should have been put to the witnesses and more importantly, the case should have been made out in cross-exaamination. We do find that on a scrutiny of the record that no such impediment stands established and therefore. all that we can record is the fact that the incident having taken place at twilight that the light conditions would not have been all that bright. On the other hand, we have also need to note that it has come on record that both the parties know each other and that they are all residents of the same village. None of them are strangers and this is one of the additional factors which we need to take into account because the identification of a total stranger is very different from a situation where one is required to identify known persons.

6. The principal eye witness in this case is P.W.1-Ningamma. She is the mother of the deceased Rajanna and she has stated in her evidence that she had gone out to graze the cattle and returned some

time in the late afternoon. According to her, her son-Rajanna had left the house and some time thereafter in the late evening, the accused persons came to her house in a group. She states that it was about 6.30 p.m. and that the accused were armed with weapons like machus and clubs and they enquired with her about the whereabouts of her son Rajanna. She got frightened and went inside the house and closed the front door whereupon all the accused threw stones on the roof of the house and damaged the tiles. She states that she opened the door of the house and the accused asked her to show Rajanna and that she told them that Rajanna is not in the house. The accused left the place saying that they would do away with the life of Rajanna. This witness then proceeds to state that she had followed the accused and when they reached near the house of one Manchammana Motegowda, she saw her son Rajanna coming from the temple side. On seeing the accused, Rajanna tried to go towards the house of Motegowda but the accused caught hold of him and assaulted him with machus and clubs. She states that they assaulted him all over the body including the head portion. She has then mentioned the names

of four persons namely Kariyappa, Appaji, Shivappa and Thimmaiah who came there where upon the accused ran away from the spot carrying the weapons with them. She has then mentioned that the injured Rajanna was put into a car by Shivappa for being taken to Huliyurdurga and that she also travelled in the same car. On the way, Rajanna died and they went to the Police Station along with the dead body. The doctor came to the Police Station and after examining Rajanna, he pronounced him dead. She states that the complaint Exhibit P.1 was lodged by her and she also identifies her thumb impression on the complaint. The witness has been cross-examined and strangely enough, a series of questions have been put to her in the course of which, answers have been elicited wherein she has reiterated the position that all the accused carried stones, machus and clubs. She states that A-4 was carrying a stone and bamboo club, the first accused was carrying a stone and a knife likewise, the second accused was carrying a stone and a machu, the third accused was carrying a stone and a club, Raja (A5) was also carrying a machu and a stone and the seventh accused was carrying a club and the

rest of the accused were carrying only clubs. Again, in paragraph-8 the answers that are elicited are to the effect that she saw the accused assaulting her son Rajanna from a distance of two malas. The first accused gave a blow on the head of Rajanna and at that time the first accused was standing behind Rajanna. She has also admitted that she cannot give the number of blows given by each of the accused. Apart from this, we do not find any material having been elicited that could either discredit the credibility of this witness or create any doubt in the mind of the Court with regard to the witness having seen the incident in question.

7. P.W.3-Appaji is also an eye witness. He has given the same sequence of events as P.W.1 has set out and he states that he has personally witnessed the accused holding Rajanna and assaulting him with machus and clubs. He also refers to the presence of P.W.1 and Kariyappa at the spot. According to him, Kariyappa and Thimmegowda brought some water and gave it to Rajanna and also sprinkled some water on his body. In the cross-examination,

certain answers have been elicited, the first of them being that the deceased Rajanna was in between P.W.3 and his elder brother P.W.4-Shivappa when the incident took place. He has also stated that the first accused held the deceased Rajanna and assaulted him and that the rest of the accused surrounded him. This witness states that the first accused assaulted Rajanna on the right fore-shoulder. According to him, the second accused assaulted him on the right side of the body including the right thigh and the rest of the accused assaulted him with clubs all over his body and all of them held the deceased and assaulted him.

8. We then come to the evidence of P.W.6-Shivappa. This witness is the younger brother of deceased Rajanna. He is also an eye witness. He corroborates the evidence of P.W.1 with regard to the accused who were armed with machus and clubs, coming to the house asking for Rajanna, throwing stones on the house and leaving the place stating that they will kill Rajanna. He

has thereafter proceeded to describe the incident in absolutely identical terms to what has been deposed to by P.W.1. In examination-in-chief itself, he states that it was purely out of fear that he did not attempt to go to the assistance of his brother or to rescue him. He states that after the incident, P.W.3 and himself along with their mother took Rajanna in the car and since he died, that they went to the Police Station with the body. Nothing significant has been elicited in the cross-examination of this witness.

8A. We then come to the last of the witnesses P.W.9-Kariyappa. He is the son-in-law of P.W.1. He has supported the statement made by P.W.1 that he was along with the other persons in the house feeding the silk worms and he described the earlier part of the incident when the accused had come to the house of P.W.1 armed with machus and clubs when they had threatened her and left and he thereafter describes the incident in the same terms as the earlier witnesses have done. Nothing of consequence has emerged in the cross-examination

which could either cast a doubt on the presence of this witness or on the fact that he has witnessed the incident.

9. As indicated by us earlier, the appellants' learned Counsel have contended that all these witnesses have admitted to the fact that there was litigation pending between the parties and have also admitted the fact that there was a high level of hostility between them. They have also admitted that some incidents have taken place between the two groups at an earlier point of time. On the basis of this background, the submission was canvassed on behalf of the accused that this is a deliberate attempt to falsely implicate the accused persons and we shall presently deal with the allied argument that was put forward on the basis of the medical evidence where upon the defence contended that Rajanna must have been assaulted after dusk and that since the assailants were not known to the witnesses, that they have decided to falsely implicate their long standing enemies. In support of this argument, what was sought to be pointed out to us was that if these many persons were present when

Rajanna was being mortally assaulted, that it is inconceivable to accept the position that they would not have tried to go to his assistance or to save him and had this been done, that they would certainly have had blood-stains on their clothes and more importantly that they would have possibly sustained some injuries themselves. Learned Counsel vehemently submitted that close family members and friends would never have ~~been~~ stood by as spectators when one of their family members is being brutally assaulted and the submission was that this is the clearest indication of the fact that these persons could never have witnessed the actual assault. We have in the evidence of these witnesses an explanation from each of them which was to the effect that since the accused persons were armed with deadly weapons, since they were in an aggressive mood and since they were using those deadly weapons, that the witnesses were frightened and this is the reason given by them for not having intervened. We need to take note of the fact that this was an incident in which the prosecution alleges that as many as eight persons armed with deadly weapons were attacking a single individual

and in a situation such as this, it is possible that even the family members or friends would be terrorised into a situation whereby they would act intervene. It is therefore not impossible for such a thing to happen and merely on this ground, we cannot discard the evidence which is otherwise absolutely faultless. The presence of these witnesses is again natural because the incident had taken place near the residence and having regard to the mood of the accused and the threat administered by them, it is quite natural that P.W.1 and others followed them in order to ascertain as to what precisely they were going to do next. Apart from this, we need to take note of another important fact namely that we have very carefully scrutinised the post-mortem report and the medical evidence including the deposition of P.W.16 the doctor. On a scrutiny of the injuries we do find that these injuries are the ones that could be caused by the weapons that the accused were carrying and which they had used and secondly, as far as the part of the body on which the injuries are inflicted, we

find that the medical evidence totally and completely fits in with the evidence of the eye witnesses.

10. Undoubtedly, there is a general and very strong criticism from the defence with regard to one aspect of the eye witness evidence which we need to specifically deal with. What is pointed out is that though the evidence follows a common pattern, that it is a very generalised evidence to the extent that the witnesses do not specifically indicate person by person present as to who precisely was carrying what nature of weapon. Secondly, they do not indicate as to which of the accused dealt a blow with what weapon on what part of the body and lastly, the evidence does not specifically indicate as to how many blows were given by each of the accused. On the strength of this situation, learned Counsel vehemently submitted that if the eye witnesses claim to have seen the incident from close quarters, that it is impossible for them to have been unable to clearly describe the specific details that we have referred to and it is submitted that by giving a generalised

description ~~allegation~~, a Court must seriously doubt whether at all the witnesses were present, whether they could have seen the incident in any detail and whether they are reproducing it correctly. In other words, the general challenge was to the effect that the over all quality of the evidence is too poor even taken ~~as~~ cumulatively, to sustain a conviction. We have carefully considered the submissions but we are not in agreement with any of them. We do take note of the status of the witnesses who are virtually rustic villagers. P.W.1 is a typical agriculturist lady and one cannot expect a computer like description of the incident from her. The same test applies to the remaining residents of that village who are the witnesses and as long as their depositions are along the same lines, as long as the description of the incident is consistent and not contradictory and as long as the general picture which emerges confines to the basic features of the case namely the presence of the accused, the weapons carried by them and the manner in which the assault was committed, it would meet with the requirements of law. We need to add here that where an incident involving eight persons has taken

place, that even with the best ~~face~~ of capacity to recall, it would not be either easy or possible for any individual to specifically give a more elaborate description than the one which has emerged from the witnesses. On the contrary, the generalised description that has emerged is consistent and what it establishes is that the accused had formed a group, that they were armed with deadly weapons, that they had attacked Rajanna and that pursuant to this attack Rajanna sustained serious injuries as a result of which he lost his life. The learned trial Judge has individually discussed the evidence of these witnesses and the supportive evidence and has come to the conclusion that the evidence is acceptable and that it establishes the participation of the accused persons and further more that it establishes that they were acting in furtherance of the common objective and we see no reason to interfere with these findings save and accept to the extent that we propose to set out hereinafter. We need to record here that the defence has seriously challenged the recovery evidence principally on the ground that the basic ingredients namely the fact

that particular accused person made a voluntary statement, that pursuant to the voluntary statement recoveries of the weapons were effected in the presence of independent panchas and that those weapons were thereafter seized is wanting as far as the present case is concerned. We have scrutinised the record and even though we find tnat the Investigating Officer has deposed to the factum of recovery, we uphold the plea canvassed on behalf of the defence tnat this evidence is not good enough to be relied upon. We may mention in passing that even though it is ~~the~~ well settled law that in a given instance if the panchas do not support the recovery evidence, that it is still permissible to rely on it if it is established through the evidence of the Police Officers, but we do not need to to go into that aspect of the law because on the state of the present record, we do not propose to rely on the recovery evidence.

11. As indicated by us earlier, there was a serious challenge with regard to one crucial aspect of the case namely the fact that A-4 Lokesh has sustained not one but two serious injuries. It has

emerged from the cross-examination of the doctor P.W.16 that he had sustained a massive injury on the left thigh measuring 12" x 4" x 2" so deep, that the bones were exposed and a second injury measuring 2" x 2" x 1" on the right knee joint. It is an admitted position that A-4 was admitted to the hospital at about 7.30 p.m. on the evening of 13-7-1992 itself and the learned Counsel pointed out to us that the doctor had telephoned the Police and informed them about the admission of the patient. The Police had not gone to the hospital on that day and it is only on the morning of the next day that the complaint was recorded from A-4 and it is true that the Police have registered an offence being Crime No. 93/1992 which is the case in which a 'B' report has finally emerged. The learned Counsel pointed out to us that the doctor P.W.16 has opined that these injuries could be self-inflicted and the learned Addl. SPP submitted that it is very clear that since A-4 was involved in the murderous assault on that evening, that in order to create a defence for himself that he has got himself admitted to the hospital after enquiring that some injuries were shown on his

body. We are not prepared to accept this explanation because the injuries are too large and two serious to come under the category of self-infliction and further more, the gravity of the injuries is evident from the fact that A-4 was admitted to the hospital and continued to be under treatment for as long as two months. What emerges from this is that A-4 did sustain two serious injuries and it is obvious that these injuries were sustained some time shortly before 7.30 p.m. when the hospital record indicates that he was brought there and, the question arises as to whether the injuries were sustained in the incident that is the subject-matter of this trial or whether they were sustained in some other incident. The learned Addl.SPP has drawn our attention to the copy of the complaint lodged by A-4 wherein he states that he had been assaulted by Rajanna and two others near his house at about 7.30 p.m. on that evening and that it was they who were responsible for these injuries. The submission canvassed on behalf of the State that if A-4 on his own admission states that the injuries were sustained in some other incident, that this Court should exclude those

injuries totally from consideration because those injuries have nothing to do with the present incident. It was also pointed out to us that in the statement recorded under Section 313 Cr.P.C. that A-4 has not referred to these injuries or to the alleged assault on him nor has he produced any documents or certificates or asked for any defence evidence to be led. After a considerable lapse of time, A-4 did file a further written statement as a supplementary statement to his earlier 313 Cr.P.C. statement in which he has taken up this plea. Learned Addl.SPP submitted that it is very clear that this is an attempt or an after thought to build up a defence in order to get out of the serious liability of the incident in which Rajanna has lost his life.

12. We have very carefully examined the rival contentions with regard to this aspect of the case particularly in the light of the legal position. First of all, we need to take cognizance of the fact that the injuries sustained by A-4 are relatively serious and that having regard to the gravity of these injuries, that he would have been

rushed to the hospital without any loss of time as otherwise, they could easily have led to death. That would put the point of time when the injuries were sustained relatively close to the time when he ultimately reached to the hospital making allowance for the transit time. If on the other, the injuries had resulted due to an assault at the hands of some other persons, then it only stands to reason that A-4 would have been taken to the hospital after that incident in which case, a doubt would arise as to whether at all it was possible for him to be a participant in the assault that took place at 7 p.m. On the other hand, the learned Addl.SPP submitted that the greater likelihood is that since the assault on Rajanna was virtually a free for all with several persons wielding different weapons, that the probability and possibility of one or two blows landing on A-4 cannot be ruled out and this is the more plausible explanation for his sustaining the injuries and reaching the hospital at about 7.30 p.m. We need to record here that the law on the point is very clear in so far as where there are injuries of some seriousness on the accused, that it is a requirement of law for the

prosecution to explain those injuries and significantly ~~of which~~, the witnesses are absolutely silent with regard to any ~~other~~ injury having been caused to A-4. Further more, what we need to take note of is that the investigating authorities were fully aware of the fact that A-4 was admitted to the hospital, that he had sustained two serious injuries and that he lodged a counter-complaint in respect of the alleged assault on him. Having regard to this position, it is an equal requirement of law that in the present trial the prosecution ought to have put forward before the Court a sufficient and proper explanation with regard to the circumstances under which A-4 sustained the injuries. We have also taken note of the fact that the 'B' report has been filed despite which we find that this crucial aspect of the case has been virtually left as a grey area. It is not possible or permissible for the Court to embark~~ing~~ on a conjuncture or assume a ~~computer~~ theory in an important issue such as this and having carefully considered the fact that A-4 has sustained serious injuries and that there is no good enough explanation on record with regard to how that happened, we are left with no option

except to extend the benefit of doubt to A-4. We need to clarify here that we have already indicated the different possibilities and it is for this reason that out of abundant caution we are extending the benefit of doubt to accused No.4.

13. There is one other submission of considerable importance which was put forward on behalf of the defence namely the fact that the post-mortem report indicates that there was semi digested food in the stomach of the deceased. A strong argument was put forward whereby it was contended that as far as this medico legal aspect of fact is concerned, that the incident must have taken place within about two hours of Rajanna having had his last meal. P.W.1 has indicated that Rajanna had taken his afternoon meal at about 1 p.m. and it is therefore submitted that from the medical evidence, it would be impossible to explain the position that he died at about 7 p.m. in the evening which would leave a six hour gap. We have considered the implications of this argument because the defence has contended that the incident in which Rajanna died could never have taken place at 7 p.m. if there was still semi

digested food in his stomach. The contention is two fold that either the incident took place very much earlier or that it took place very much later and the learned Counsel submitted that in either case it would completely destroy the evidence of the eye witnesses. Having regard to the implications, we have re-scrutinised the evidence and what we find is that undoubtedly, there is a reference to Rajanna having par-taken of his mid day meal at about 1 p.m. but there is also a reference to the fact that he had left the house and gone away some time around 4 p.m. The evidence is silent with regard to where exactly he had gone and what exactly he was doing during this period of time when the incident has taken place. In this background, it would be too hazardous for us to conclusively hold that Rajanna could not have eaten any food during this period of time and conversely, if he had par-taken of any food during this time, then it fully and completely explains the semi-digested food that was found in his stomach. This circumstance is therefore virtually inconclusive and cannot help the defence ~~and~~ in the manner as was sought to be presented to us.

14. Having carefully re-evaluated the entire record particularly the oral evidence in this case, we concur with the findings of the trial Court that the accused persons had, with the exception of A-4 for the reasons already indicated by us, ~~have~~ formed an unlawful assembly on the evening of 3-7-1992, that they were armed with deadly wepons as deposed to by the witnesses, that they had in furtherance of their common objective assaulted the deceased Rajanna and that pursuant to this assault, that Rajanna had lost his life. We have indicated that as far as A-4 is concerned, for special reasons and out of abundant caution we extend the benefit of doubt to him and consequently, the convictions and sentences awarded to him would necessarily have to be set aside. As far as the remaining accused namely aaccused Nos.1, 2, 3, 5, 6, 7 and 8 are concerned, we hold that they are guilty of the offence punishable under Section 149 IPC as also the offence punishable under Section 148 IPC as per the findings recorded by the trial Court.

15. On behalf of the appellants, it was pointed out to us that on the basis of the oral evidence, it has not been established as to which accused dealt which blow and the number of blows that each of the accused had inflicted. Secondly, on a careful scrutiny of the medical evidence, we find that there is a serious lacunae in so far as the doctor has not indicated as to which of the injuries are life threatening and which of them are not. Of the twenty injuries that were found on the person of deceased Rajanna, it is true that two of them are on the head, the majority of them are aimed at the lower part of the body and the limbs and consequently , having bestowed our very serious attention to the cumulative effect of this record, we find that it was incorrect on the part of the trial Court to have invoked the provisions of Section 302 IPC . Having regard to the weapons used and the nature of injuries that have been inflicted, the accused would be liable to be convicted of the offence punishable under Section 326 read with 149 IPC.

16. In the result, the appeal partially succeeds. The conviction and sentence recorded as against A-4 by the trial Court is set aside and it is directed that he be set at liberty forthwith if not required in connection with any other offence. As far as accused Nos.1, 2, 3, 5, 6, 7 and 8 are concerned, we set aside the conviction aand sentence awarded to them for the offences punishable under Sections 302 read with 149 IPC and the conviction recorded against these accused stands altered to one under Section 326 read with 149 IPC. We direct that accused Nos.1, 2, 3, 5, 6, 7 and 8 shall undergo R.I. for a period of five years each and that they shall pay a fine of Rs.5,000/- each for the conviction under this head. We maintain the conviction and sentence awarded to these accused by the trial Court under Section 148 IPC. The substantive sentences to run concurrently. The accused shall be entitled to set off for the period undergone in custody. The direction of the trial Court that out of the fine amount if recovered, an amount of Rs.30,000/- be paid to the wife of the deceased Rajanna is maintained.

17. The appeal partially succeeds to this extent and stands disposed of.

Sd/-
JUDGE

Sd/-
JUDGE

MSU/* 200999